HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.109 of 2007

Between:

E. Ram Reddy

... Appellant

And

The District Collector,
Nizamabad District and two others

... Respondents

Counsel for the appellant: Shri E. Ram Reddy
Party-in-person

::JUDGMENT::

February 08, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 22-12-2006 passed by the learned Single Judge whereby he declined to quash the acquisition of the appellant's land, but directed District Collector, Nizamabad (respondent No.1 herein) to ensure that the award is passed within 30 days and also ordained the respondents to pay costs of Rs.50,000/- with a stipulation that Rs.10,000/- shall be paid

to the writ petitioner and Rs.40,000/- be deposited with the Andhra Pradesh State Legal Services Authority.

The Facts:

i) With a view to provide house-sites to weaker sections of Venchiryal, Balkonda Mandal, Nizamabad District, the State Government decided to acquire land measuring Ac.4-23 gts. comprised in Survey No.4. As a sequel to this, respondent No.1 issued notification dated 12-10-1998 under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the Act'). Due to non-finalisation of award enquiry within two years and non-availability of funds, the proposal for acquisition was dropped and the land was released from acquisition vide notification dated 31-1-2002 issued under Section 48 (1).

ii) The appellant challenged withdrawal notification in Writ Petition No.11361 of 2003 by asserting that even before finalization of acquisition proceedings, the land in question was divided into 108 plots, which were allotted to weaker sections of the society, some of whom had even taken possession.

iii) During the pendency of Writ Petition No.11361 of 2003, the villagers reiterated their demand for house-sites. Thereupon, respondent No.1 issued fresh notification dated 14-11-2003 under Section 4 (1) of the Act. This time, enquiry under Section 5-A was dispensed with and notices under Sections 9 and 10 were issued. Advance possession of the land was also taken on 20-3-2004, albeit without paying estimated compensation in terms of Section 17 (3-A) of the Act.

The petitioner challenged the second round of acquisition proceedings by filing Writ Petition No.21368 of 2006. He pleaded

that after having withdrawn the acquisition proceedings initiated earlier, respondent No.1 could not have issued fresh notification under Section 4 (1) and that too during the pendency of Writ Petition No.11361 of 2003. He also pleaded that failure of the respondents to comply with the mandate of sub-section (3-A) of Section 17 has the effect of vitiating the acquisition proceedings. Still further, he pleaded that the urgency clause enshrined in Section 17 could not have been invoked for dispensing with the enquiry under Section 5-A. In the counter filed on behalf of the respondents, it was averred that the acquisition proceedings initiated in 1998 were abandoned because of non-compliance of Section 11-A and non-availability of funds; that advanced possession of the land was taken on 20-3-2004 and that notices under Sections 9 (1) and 10 of the Act have been issued and published on the notice board of the Gram Panchayat Office and at conspicuous places in the village. It was further averred that the acquisition was for a public purpose, namely, allotment of house-sites to weaker sections of the village.

The learned Single Judge dis-approved the action of the respondents to take possession of the land on 20-3-2004 without paying 80% of the estimated compensation to the appellant, but refused to nullify the acquisition on the ground of delayed filing of the writ petition and also on the ground that the writ petitioner has not questioned the validity of notification issued under Section 4 (1) or the invocation of urgency clause. This is evinced from the following extracts of the order under challenge:

> "However, since the acquisition is for the benefit of the weaker sections and possession was taken on 20.3.2004 and the writ petition filed more than 2½ years later on 20.10.2006, this court is not inclined to quash the acquisition though this Court is prima facie, satisfied that the invocation of urgency in the fact situation is an unwarranted, irrational and colorable

exercise of statutory power: Possession having been taken on 20.3.2004 more than 5 months after the notifications u/Sec.4 (1) and 6 belay the urgency and invalidates the satisfaction recorded for invoking urgency. However, since the petitioner has not chosen to challenge the validity of the notification u/Sec.4 (1) or the invocation of urgency, within a reasonable time after possession was taken on 20.3.2004, this Court is not inclined to invalidate the acquisition wholly."

We have heard Shri E. Ram Reddy, who has appeared in person and carefully perused the record of this appeal along with that of Writ Petition No.21368 of 2006 and Writ Petition No.11361 of 2003. In the first writ petition filed by him questioning the validity of notification dated 31-1-2002 issued under Section 48 (1) of the Act, the appellant has made the following substantive prayer:

> "It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction and more particularly one in the nature of WRIT OF MANDAMUS directing the respondents to pay compensation at par with the prevailing market rates by setting aside the impugned Notification issued by the 1st respondent in Gazette
> dt.31-01-2002 and declare it as null and void and pass any other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

In Writ Petition No.21368 of 2006, the appellant prayed as under:

> "It is humbly prayed that this Hon'ble Court may be pleased to issue a Writ, Order of Direction and more particularly one in the nature of Writ of Mandamus to set aside Notification issued vide proceedings No.G2/7558/ 2003-1 dated 14-11-2003 and declare it as null and void and pass such other or further orders as deem fit and proper in the circumstances of the case."

A bare reading of the above reproduced prayer clauses of the

two writ petitions show that the appellant had sought diametrically opposite reliefs. Therefore, refusal of the learned Single Judge to nullify the acquisition proceedings on the premise that possession of the land had been taken on 20-3-2004 and there was delay of 2½ years in filing of the writ petition cannot be dubbed as erroneous and we do not see any reason to interfere with the impugned order moreso because substantial justice has been done to the appellant by ensuring payment of 80% of the estimated compensation and by issue of a direction to respondent No.1 to ensure that the award is passed within thirty days.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ petition, WAMP No.176 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 08, 2007

svs